

USE OF FORCE ADMINISTRATIVE INSIGHT REPORTDate of Incident: 010117 Location: N.SECOND AND MADISON

Arrestee/Subject Information					
Name	Sex	Age	D.O.B	Case#	
BALDWIN, DANNY	M	56			17000014

Officer/Employee Information		
Name	ID#	Division/Shift
VAN WOERKOM, ANDREW	0346	PATROL – F SQUAD
BONILLA, ROBERT	0323	PATROL – F SQUAD

Actions by Arrestee/Subject		Type of Force Used by Officer
X	Refusal to submit to detention/custody by passive resistance.	Use of ASP Baton as pain compliance device.
	Refusal to submit to detention/custody by active resistance, touching, grappling, struggling, etc.	X Use of Conducted Energy Device (TASER).
	Verbally threatened/challenged officer.	Use of Chemical agents to include OC spray.
	Assumed threatening/fighting stance.	Use of carotid restraint.
X	Ran from detention/custody.	Physical force resulting in injury to officer or suspect, or where medical attention is required as a result.
	Physically assaulted officer with hands, feet, body.	Use of Police Dog where there is a bite injury or complaint of injury.
	Use or threatened use of impact weapon. Specify weapon:	Use of Baton or other impact weapon where the suspect has been struck
X	Use or threatened use of edged weapon. Specify weapon: <u>FOLDING KNIFE</u>	Use of Flexible Baton (bean bag round).
	Use or threatened use of firearm or replica firearm. Specify weapon:	X Use of Firearm when discharged.
	Other action. Specify:	Other action. Specify:

UOF: Within Policy Other

Attach narrative description of incident.

Admission to Hospital Required: Yes No Death: Yes No

Internal Affairs Commander

Date

3/17/17

Bureau Commander

Date

3/27/17Action: See Ltr SUPPLEMENTAL REPORT

Date

Chief of Police

Date

Action: REPORT AND SUPPLEMENTAL APPROVED

ITP TRAINING PLAN

TO: CHIEF OF POLICE
FROM: Rob Ransweiler
Administrative Lieutenant
RE: Proposed Training Addressing UOF – Administrative Concerns



BACKGROUND

As a result of the 1/1/2017 Officer Involved Shooting, Operations Captain Moulton expressed five training concerns and recommendations.

RESPONSE

Issue #1 - Captain Moulton recommended that ITP conduct regular “force on force” training to address “time/distance” perception/reaction.

The current ITP quarterly mandatory department training plan for all officers and sergeants includes a 2.5 hour scenario based force on force training during our December training date. I have discussed this recommendation and the reason behind it with our Training Coordinator, Jacob Cutting to ensure that specific scenarios are utilized that focus on time/distance. Each of the scenarios will be conducted with live roll players in safety suits that will allow the officer/sergeant to directly engage in realistic force if it is reasonable and necessary.

Issue #2 – It is recommended that additional training be provided for supervisors to be able to recognize and address stress factors in their officers.

In discussing the force on force realistic training scenarios with Officer Cutting (Issue #1), we discussed designing each of the scenarios to include a supervisory role which will allow sergeants to make realistic decisions on use of force scenarios in a controlled environment.

Issue #3 – It is recommended that additional training is given on the less lethal bean bag shotgun, the policy and best practices for use.

The current ITP quarterly mandatory department training plan for all officers and sergeants includes a 2.5 hour block of instruction for less lethal options during the

training scheduled for June 12th – 16th, 2017. The outline for the course includes a .5 hour block of instruction covering ECPD General Orders 15.1 – “*The officer shall choose the available force option, which is reasonable and necessary to effectively establish control of the situation. Clearly, good judgment and the specific circumstances of each situation will dictate which option(s) an officer chooses.*

Options of force, from the spectrum of verbal control to the use of a firearm, include, but are not limited to:

- Physical strength*
- Pain compliance techniques*
- Special equipment*
- Department approved gas or chemical agents*
- Impact weapons*
- Carotid restraint*
- Police dogs*
- Flexible baton*
- Advanced M26/X26 Taser Electronic Control Device (ECD)”*

The remainder of the time, 2.0 hours will be utilized for ECD qualification, Blue Gun less lethal familiarization/qualification, impact weapon training as well as a description of the capabilities and uses for the SWAT 40 mm less lethal round and the Composite Platoon pepper ball rounds. When each force option is discussed, the appropriate G.O. for that force option will be discussed as well.

Issue #4 – It is recommended that clear and concise language be used when deploying less lethal force options.

Clear and concise communication is essential to the success of high stress situations. ITP will discuss and solidify specific and clear words to describe each of the force options that will be given to the officers and repeated in all of our training scenarios to ensure the common vernacular is easy to use and recall.

Issue #5 – It is recommended that training be given on the effectiveness and the use of all less lethal and non-lethal force options.

This will be discussed and implemented in the department training discussed above, June 12th – 16th, 2017 (Issue #3). As the instructors cover each of the less lethal options, they will discuss the effectiveness of that option and situations where its application would be appropriate.

CONCLUSION

ECPD has been examining use of force incidents over recent years and adjusting our training techniques in ways that will better prepare officers for real life situations. Training for 2017 was adjusted, prior to this use of force, to a quarterly format versus the previous bi-annual format to increase the frequency of training. Our new training

outline builds the reality based training concept into each of our core modules. Aside from the scenario training listed above, other training adjustments were made. Department use of force training will include scenario based force options and emphasize decision making and judgment. Handcuffing techniques (defensive tactics) will now be done in a scenario that allows the officer to utilize verbal commands and de-escalation techniques to seek voluntary compliance in accomplishing the handcuffing task. Qualification shoots will include stress inoculation such as a short run prior to entering the range and completing the qualification which will include shoot/no-shoot targets to condition officers to evaluate circumstances before utilizing lethal force. Other training adjustments will include a focus on procedural justice, de-escalation techniques, crisis management, interacting with the mentally ill / suicidal subjects and less lethal force options.

4/9/17

UOF 2017-14

SUPPLEMENTAL TO USE OF FORCE REVIEW

TO: CHIEF OF POLICE
FROM: Rob Ransweiler
Administrative Lieutenant
RE: Use of Force Report
January 1, 2017
Review of Lethal Force - Firearm

RR *D*

Involved Personnel:

Andrew VanWoerkom - Officer

BACKGROUND

The District Attorney's Office completed their legal review of the case and found that Officer Van Woerkom was legally justified in his use of lethal force. It took an extensive amount of time to complete the ECPD use of force report and Officer Van Woerkom has been on modified assignment throughout the investigation. In an effort to ensure Officer Van Woerkom was prepared to return to full duty, Training Division administered a scenario based training session for Officer Van Woerkom as well as a Department handgun qualification shoot.

TRAINING

Officer Cutting, our Training Coordinator and AICC certified instructor, prepared a training outline that consisted of the training objectives and the type of scenarios that would be used. Before beginning the training scenarios, Officer Cutting discussed state law and departmental General Orders as they relate to use of force. Officer Cutting reintroduced Officer Van Woerkom back into patrol work and stressful situations through simulated contacts on the "FATS" machine at La Mesa PD. After completing those, Officer Van Woerkom returned to ECPD to complete three scenarios with an AICC instructor, Sgt. Larson acting as the suspect, wearing a protective suit that allowed for the realistic use of force on force. Officer Gonsalves was present as a cover officer and provided any assistance that was requested of him by Officer Van Woerkom. I observed all three portions of the training.

Following each scenario, Officer Cutting verbally debriefed the choices and the tactics that Officer Van Woerkom was choosing to use. In the live scenarios, Sgt. Larson also gave his opinion of Officer Van Woerkom's responses to the scenarios. At the conclusion of the live scenarios, Officer Van Woerkom successfully performed a handgun qualification shoot.

CONCLUSION

Along with the training outline (A-1), Officer Cutting also prepared an after action report (A-2). The report outlines each of the scenarios, their objectives and his opinion that Officer Van Woerkom responded appropriately to each scenario. In his conclusion, Officer Cutting states that Officer Van Woerkom, "displayed the ability to de-escalate situations with effective communications, recognize suspect behavior, and use good judgment in the application of reasonable and necessary force. He also demonstrated good tactics by requesting appropriate resources during each scenario." I agree with Officer Cutting's assessment of the training and Officer Van Woerkom's performance. The training was a useful tool in preparing Officer Van Woerkom to return to his patrol duties.

ADDENDUM

A – 1 TRAINING OUTLINE – Prepared by Officer Cutting
A – 2 AFTER ACTIONS TRAINING REPORT – Prepared by Officer Cutting



EL CAJON POLICE DEPARTMENT

2017 TRAINING OUTLINE

TRAINING OUTLINE

April 24, 2017

Topic: Use of Force "Scenario Training"

Hours: 3 Hours

Instructor: Sergeant Larson / Officer Cutting

Location: El Cajon Police Department / La Mesa Police Department

Objective: This training will require the student to display safe tactics, decision making and proper application of force. Ensure the student knows California Law and Department Policy.

Execution: The training day will start at La Mesa Police Department. The first portion of scenarios will be conducted on the "FATS" Simulator. The scenarios will replicate the radio calls and contacts that law enforcement can encounter. The overview of the scenarios will include the following: Pedestrian Contact, Domestic Violence, Mental Health. The scenarios can have many different outcomes based on the student's performance.

The second portion of training will be conducted at the El Cajon Police Department. These will be force on force scenarios. This will give the student the ability to use force options on a role player in a safety suit. The scenarios will expose the student to many different realistic incidents.

Template scenarios are: Pedestrian Contact-> (physical altercation) High Risk Pedestrian Stop->(foot pursuit to non complaint).

Administration/Equipment: The “suspect” role player will be equipped with a safety suit to provide realistic training. The student will have the following inert pieces of equipment: BWC, OC, ECD, Firearm, Baton. The force on force scenarios will require the following personnel: Suspect role player, Proctor, Safety Officer, Cover Officer.

The training will be conducted at the indoor range with modular safety mats.

Range/Locations Fees: None

Safety:

- Any injuries will be evaluated and care determined by Safety Officers on scene.
- **Tactics Training** – A complete safety check will be done on all tactics training scenarios. Personnel will remove any live weapons, ammunition, chemical agents, explosives and diversionary devices and secure them away from the training site.

Conclusions:

An after actions will be conducted at the completion of this training.



EL CAJON POLICE DEPARTMENT

AFTER ACTIONS TRAINING REPORT

Topic: Scenario Training

Date: May 3, 2017

Hours: 1430-1730

Instructor: Officer Cutting

Location: El Cajon Police Department / La Mesa Police Department

Overview: I was instructed by LT Ransweiler to conduct use of force scenario training for Officer Van Woerkom. The training day started at the ITP classroom at 1430 hours and consisted of three parts.

The training began with a review of the legal authority to use force under 835a PC, suspect behavior and force options as outlined in ECPD General Orders 15.0 and 15.1.

California Penal Code 835a

Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.

A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.

ECPD General Order 15.0

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While a reasonable use of force may be necessary in situations which may not otherwise be controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or clearly would be ineffective under the particular circumstances. Officers are permitted to use that force which is reasonable and necessary to protect themselves and others from bodily harm.

Justification for the use of force must be limited to what reasonably appears to have been the facts known or perceived by the officer at the time he/she decided to use the force. Facts not known to the officer, no matter how compelling, cannot be considered at a later time.

ECPD General Order 15.1

The officer shall choose the available force option, which is reasonable and necessary to effectively establish control of the situation. Clearly, good judgment and the specific circumstances of each situation will dictate which option(s) an officer chooses.

Options of force, from the spectrum of verbal control to the use of a firearm, include, but are not limited to: Physical strength, Pain compliance techniques, Special equipment, Department approved gas or chemical agents, Impact weapons, Carotid restraint, Police dogs, Flexible baton, Advanced M26/X26 Taser Electronic Control Device (ECD).

Firearms Training Simulator

The second portion of training was conducted on the "FATS" simulator at La Mesa PD. The simulator is designed to train and test decision making, verbal commands and use of force judgment.

The trainee is given a radio call that is dispatched through the computer simulator. Once that information is received the scenario begins. The trainee works through the scenario to resolve the situation. The scenarios are truncated and include many different endings that can challenge the trainee's response to suspect behavior ranging from verbal compliance to lethal force. The endings are chosen by the instructor based on how the trainee is interacting with the scenario.

Scenario 1 - Uncooperative Pedestrian Contact

The scenario displayed two subjects in a verbal argument. Officer Van Woerkom was able to effectively de-escalate the situation with clear and concise commands. He demonstrated good judgment and used effective communications to establish verbal control in compliance with G.O. 15.1.

Scenario 2 - Domestic Violence

The scenario began with a male subject hitting his wife. The subject was displaying assaultive behavior and did not follow Officer Van Woerkom's verbal commands. In compliance with 835a PC and G.O. 15.1, Officer Van Woerkom appropriately used his Electronic Control Device (ECD) to overcome the resistance and effect an arrest. This was a reasonable and necessary level of force for the situation.

Officer Van Woerkom used the ECD in accordance with ECPD General Orders 15.8.1 which states the ECD can be used to protect the officer or other persons from attack.

Scenario 3 - Armed Suicidal Subject

Since the other two scenarios ended without the use of lethal force, Lt. Ransweiler asked me to direct this scenario to present Officer Van Woerkom with a lethal confrontation. The scenario displayed a suicidal subject armed with a handgun sitting inside a vehicle. Officer Van Woerkom attempted to de-escalate the situation and gave clear verbal commands to "drop the gun." At this point in the scenario, even though Officer Van Woerkom was using appropriate de-escalation techniques, I chose to have the scenario end with the suspect firing his handgun at Officer Van Woerkom.

The subject exited the vehicle and began firing at Officer Van Woerkom. He immediately responded to the threat and utilized lethal force. This was a reasonable and necessary level of force for the situation.

Officer Van Woerkom acted in accordance with ECPD General Orders 15.11.1. This section states an officer is authorized the use of deadly force when it appears reasonably necessary:

- To protect himself/herself or others from an immediate threat of death or serious bodily injury;
- To prevent a crime in which human life is in serious jeopardy as a result of a suspect's actions;
- To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.
- Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

Scenario 4 – Trespass / Uncooperative Transient

The scenario displayed a transient subject who refused to leave a business lot. During the contact the subject became more agitated and armed himself with a frying pan. The subject began walking towards Officer Van Woerkom. He pointed his firearm at the subject and repetitively gave verbal commands to "drop the weapon." The subject complied and was taken into custody. Officer Van Woerkom was able to effectively de-escalate the situation with clear and concise commands. He demonstrated good judgment and used effective communications to establish verbal control in compliance with G.O. 15.1.

Role Play Scenarios

The third portion of scenario training was conducted at the El Cajon Police Department indoor range. The "FATS" machine exposed Officer Van Woerkom to simulated situations in a controlled environment. These live role play scenarios simulated realistic police incidents which mimic real life stressful encounters and gave Officer Van Woerkom the option to use force on a live role player, Sgt. Larson, in a safety suit.

Trespass Pedestrian Contact

Officer Van Woerkom was told that the suspect role player was on private property and was trespassing. He contacted the suspect who was leaning against a wall asleep. He touched the subject in an attempt to wake him up. The subject was argumentative and began to stand up. Officer Van Woerkom asked him to remain seated for the contact. When the subject did not listen, he tried to physically control the subject. This was not effective and the suspect stood up taking a fighting stance. The suspect began to physically assault Officer Van Woerkom with punches.

Officer Van Woerkom used his baton as an impact weapon and struck the suspect in the arms and legs. He gave clear verbal commands of "police get on the ground" while using his impact weapon. The suspect complied after force was used. The force option selected and application of baton strikes was appropriate and necessary for Officer Van Woerkom to effect the arrest. Officer Van Woerkom called for a cover unit and maintained a position of advantage until cover arrived. The cover unit and Van Woerkom placed the suspect into handcuffs. He also appropriately requested an ambulance and supervisor to his location.

Officer Van Woerkom acted in accordance with ECPD General Orders 15.5.1. This section states an impact weapon may be used to protect the officer from attack, subdue

a suspect who is actively resisting or physically struggling to avoid arrest. The primary target areas for the police baton are the arms and legs.

Armed (gun) Robbery Suspect

Officer Van Woerkom completed a 400 meter run to simulate a foot pursuit of the robbery suspect prior to contacting the role player. The suspect, upon police contact did not follow verbal commands and was very agitated. The suspect had a firearm visible in his front waist band. Officer Van Woerkom recognized the threat and gave clear concise verbal commands while maintaining the suspect at gunpoint. The suspect kept his hands up and away from the firearm. Officer Van Woerkom requested code three cover.

Once the cover unit arrived, Officer Van Woerkom discussed his desire for the less-lethal shotgun to be utilized, which the cover officer agreed with and a deployment was simulated. This was effective and the suspect was taken into custody. Officer Van Woerkom demonstrated good judgment in the decision to use the less-lethal bean bag as a reasonable method to effect an arrest of the suspect. This use of force was done within ECPD General Orders 15.4.1.

- Attempts to subdue the subject by Department-approved arrest and control techniques and/or self-defense techniques have been, or would likely be, ineffective.
- It is reasonable to expect it will be unsafe for officers to get within lunging distance of the subject.
- At least one back-up officer, with a conventional firearm, must be present and positioned to cover the officer using the beanbag gun in the event it does not resolve the situation.

High Risk Pedestrian Stop

Officer Van Woerkom performed a high risk pedestrian stop on an auto theft suspect who threw a gun as Officer Van Woerkom was approaching. He held the suspect at gun point and gave verbal commands. Officer Van Woerkom's command presence and communication allowed him to gain verbal control of the suspect. He requested a cover unit and the subject was taken into custody.

Officer Van Woerkom demonstrated good judgment, sound tactics and utilized appropriate resources to gain control of the situation without the need for force.

Conclusion

Officer Van Woerkom showed competency in all the learning objectives.

On all scenarios, Officer Van Woerkom displayed the ability to de-escalate situations with effective communications, recognize suspect behavior, and use good judgment in the application of reasonable and necessary force. He also demonstrated good tactics by requesting appropriate resources during each scenario.

Respectfully Submitted,

Officer J.Cutting #268

Use of Force Administrative Insight Report

I have reviewed the use of force (UOF) report completed by Internal Affairs Lt. Rob Ransweiler on March 17, 2017.

Lt. Ransweiler concludes that “the utilization of lethal force by Officer Van Woerkom at that specific time was objectively reasonable and necessary and was within the guidelines of the Departmental General Orders”. In his analysis, Lt. Ransweiler took into account Off. Van Woerkom’s statements to investigators, and therefore his state of mind. According to Lt. Ransweiler, Off. Van Woerkom “perceived a need to protect himself, the other officers and the general public from an immediate threat of death or serious bodily injury”.

Although the investigation ultimately concludes Off. Van Woerkom’s use of deadly force was justified and within the guidelines of Departmental General Orders I have some concerns which I will address in this report.

Issue #1: If Officer Van Woerkom perceived an immediate deadly threat to himself or other officers, a primary factor to this would have been proximity to the suspect. According to Lt. Ransweiler, Off. Van Woerkom “articulated his discomfort with how close they were to the (suspect)”. The suspect was stationary and on his knees at the time of the shooting. If Off. Van Woerkom felt the suspect was too close he should have increased the distance between himself and the suspect. With the suspect on his knees, Off. Van Woerkom had complete control over the distance between himself and the suspect. If he felt the proximity of the other officers and the suspect was too close he should have verbalized that to the other officers present.

Recommendation: Additional force on force training during regular quarterly department training to address time/distance issues. Officers should be instructed, when applicable and appropriate, to increase distance between themselves and suspects when that distance is a significant safety concern for them and increasing that distance would not increase danger to the general public.
*Specifically, Off. Woerkom should complete force on force, or other simulation training, either in-house or contracted, to cover this specific issue.

Issue #2: There were two sergeants on scene and clearly, neither expected Off. Van Woerkom’s to use deadly force.

Recommendation: Off. Van Woerkom’s contact with the suspect starts “low-key” and Off. Van Woerkom does a very good job of trying to communicate with him in a calm demeanor. Due to the suspect’s non-compliance it quickly escalates, and it is clear from the audio of the BWC footage Off. Van Woerkom’s stress level increases significantly and he is unable to continue to communicate with the suspect in a calm manner. Although we cannot expect on-scene field supervisors to be mind-readers and anticipate what their officers will do in any given situation, I believe we can mitigate this issue through additional training. During quarterly department

training, or perhaps additional add-on training, this topic can be addressed with sergeants in both a non-stress table top environment and high-stress force on force environment. Sergeants should be instructed to look for and identify signs of increasing stress from officers in high stress environments and address them as they occur.

Issue #3: Less-lethal bean bag shotgun was at scene but not deployed.

Recommendation: Additional less-lethal training during quarterly department training. A less-lethal beanbag shotgun was available at the scene of the OIS but not used. This was an ideal situation to use a less-lethal munition. The suspect was armed with a deadly weapon (knife), was non-compliant, and other methods (Taser) failed. Without less-lethal being effective, there are only two plausible outcomes to this event or similar events. The suspect will either ultimately comply and drop the deadly weapon, or officers will use deadly force when they've exhausted all other options and have no other choice. This can be a simple discussion item during training to discuss the philosophy and best practices behind less-lethal use.

Issue #4: Sergeant on scene verbalized "do it, do it", attempting to encourage deployment of a less-lethal shotgun.

Recommendation: Clearer communication is required. Department training is needed to clarify terminology with all sworn. Department should have clear concise terminology for less-lethal deployment. Consider "Taser!", "OC!", "Beanbag!", etc.

Issue #5: Additional less-lethal and non-lethal options not considered.

Recommendation: Although the events of this specific event unfolded very quickly, additional less-lethal and non-lethal options should be considered in future similar events. In this specific event, if recommendation #1 was applied, perhaps there would have been less sense of urgency and additional options could have been utilized such as chemical agents or a police canine. In this particular situation, with the suspect static on the ground, the use of OC would have been ideal after the failure of the Taser devices. Additional training during department training regarding these concepts is needed.

*Training recommendations included in this report shall be forwarded to the Inspections Training & Personnel (ITP) for their review and implementation.


Capt. Mike Moulton

3/24/2017

CONCUR WITH
RECOMMENDATION,
FORWARDED TO ITP FOR
TRAINING PLAN. 

Watch Commander Summary of how force was used, whether force was used within policy and recommendations for further action if appropriate:

I have reviewed all documents related to this incident and examined the body worn camera videos of the contact between Baldwin and Officers Van Woerkom, Bonilla, Sergeants Larson and Sprecco. The incident began with Baldwin calling 911 seven times in an angry and agitated state. Officers contacted Baldwin on the center median of Second St. and Oakdale. Baldwin was armed with a knife, agitated and uncooperative.

There are three points in this incident where force was used. First, Officer Bonilla discharged his Electronic Control Device (ECD). Then Officer Van Woerkom discharged his ECD and the incident concluded when Officer Van Woerkom discharged his firearm.

Sergeants Larson and Sprecco responded to Officer Bonilla's request for code three cover as did several other officers. The other officers arrived either as Officer Van Woerkom discharged his firearm, or shortly thereafter, so their BWC video is not relevant to this use of force investigation.

After reviewing this incident, it is apparent to me that Officers Van Woerkom and Bonilla had a lawful reason to contact and detain Baldwin. They were responding to the seven calls that Baldwin made. He affirmed to Van Woerkom that he was the person who called the police and when they went to talk to him, he pulled out a knife. Force was used to take him in to custody after he refused lawful orders to surrender the knife.

FACTS:

On 1/1/17 at 2043 hours, an unidentified male subject called 911 seven times from a pre-paid cellular phone [REDACTED]. The caller has since been identified as Baldwin. Baldwin was agitated and demanding that the police contact a female and bring her and a dog to him. In multiple calls, Baldwin curses at the operator and tells us to bring the female and the dog to Second and Oakdale. Baldwin demanded that the task be completed within 20 minutes and then counted down the time on subsequent calls. The calls took place over a 28 minute span. At 2047 hours, Baldwin told the call taker, "Listen carefully you're going to bring [REDACTED] [REDACTED] to corner Oakdale and Second in the main divider (inaudible) and I'm taking myself out". At 2052 hours, Baldwin tells the dispatcher that he is going to, "take himself out in front my girlfriend". He states that he wants answers to his questions before he does it and states that it is no joke.

In the call for service (2017-00000100), it shows that the call was dispatched at 2056 hours. It notes that the caller disconnected several times, that he had no teeth so it was hard to understand him and that he was "415" about a girl and a dog. The call indicates that the officers need to evaluate for a possible disturbance between a male and a female that appear to be separated. There is no mention in the call for service of either call where Baldwin told the dispatcher and the dispatch supervisor that he was suicidal and that he wanted to commit suicide in front of his girlfriend. There was no attempt by

PL

the dispatcher or the dispatch supervisor to discern, if any, what type of weapon Baldwin had and intended to use to commit suicide.

Critical information was missing from the call for service about Baldwin's intent or at least his ramblings about suicide. Information like this alerts officers to approach the call with a different mindset and perhaps with additional resources.

When the officers approached Baldwin in the roadway, Officer Van Woerkom activated his body worn camera (BWC), but Officer Bonilla failed to activate his. Officer Van Woerkom's camera shows the officers approach Baldwin, who is standing on the center median of Second Street, south of Oakdale. As Baldwin walks backward on the center median, Officer Van Woerkom can be heard attempting to communicate with Baldwin, asking him his name, identifying himself by his first name, Andrew, and asking Baldwin what was going on today. Baldwin's response is about his girlfriend and his dog. Baldwin steps into the southbound lane of traffic and continues to walk south, away from the officers. Van Woerkom continues to try to talk to him and begins to ask him to sit down and put down the knife. Baldwin refuses, so Van Woerkom asks how they can help him. Bonilla can also be heard asking Baldwin to sit down. Baldwin refuses and keeps saying something like, bring her to me.

Vehicles can be seen in the video continuing north on Second Street where Van Woerkom is walking. Sergeant Larson arrives in the patrol sergeant SUV and parks on the west side of the south bound lanes creating a traffic block on the southbound lanes. When Sergeant Larson steps out from beside the vehicle, you can hear the three officers communicating. Sergeant Larson asks if anyone has a Taser and both officers reply that Officer Bonilla has a Taser on Baldwin. Officer Bonilla can be heard commenting about the thick jacket that Baldwin is wearing. While an officer is broadcasting an update, Baldwin turns away from the officers and runs south on Second St. As Officer Van Woerkom is running on the center median, there are a large number vehicles in the northbound lanes only feet from him. He steps into the southbound lane as Baldwin stops running. When Baldwin stops, he quickly turns around and advances several steps forward toward the officers with his right hand away from his body. The knife is reportedly in that hand, but not clearly visible on the video. It is at this moment that Bonilla discharges his ECD.

The officer's tone in the video up to this point was calm, trying to assist and attempting to gain voluntary compliance for Baldwin to put the knife down. Officer Bonilla's ECD was not effective in gaining control of Baldwin. Baldwin appears to try to remove the ECD wires by swiping both of his hands across the front of his body. The knife is visible swiping at least once in the video from side to side in front of Baldwin in the direction of the officers. Officer Bonilla repeatedly and rapidly says to "go Taser" because he does not have a "taser". Officer Van Woerkom can be seen on his video transitioning his light to his right side, drawing his ECD, putting it in his right hand and extending it toward Baldwin.



As the aiming laser on the ECD appears on Baldwin, Officer Bonilla can be heard insisting and repeating several times that Officer Van Woerkom aim lower. When Officer Van Woerkom pulls the trigger on his ECD, the device can be heard on the video but does not appear to discharge the barbs. Officer Van Woerkom can be heard stating that the device was "ineffective". After a short period, as Officer Van Woerkom is saying that it was ineffective, a pop can be heard on the video and wires can be seen extending out. Baldwin can be seen reacting to the ECD, tilting toward his right side and then going down to his knees. Baldwin then swipes his left arm across the front of his body at least two times and appears to be trying to remove the barbs.

At this point, while on his knees, Baldwin leans back and holds both of his arms out to his side exposing his torso. He is facing north in the southbound lanes toward Sergeants Larson and Sprecco. Sergeant Sprecco can be seen on the video with a less lethal (blue gun) shotgun pointed at Baldwin. Baldwin is saying something to the officers, but I am not able to hear what he says because the officers are telling him to get on the ground. Baldwin then raises the knife in his right hand and places it along the right side of his neck. Simultaneously, Sergeant Sprecco lowers the less lethal shotgun. Baldwin leans back and takes a fast swipe across his neck.

As Baldwin completes the first swipe across his neck, his body comes up off of his heels and moves forward. It is at this point that Sergeant Larson can be heard saying "do it, do it." After Baldwin completes the first swipe across his neck, he immediately returns the knife to his neck. Van Woerkom is observing Baldwin from Baldwin's right side, where Baldwin is holding the knife. As the knife passes Baldwin's neck the second time, Officer Van Woerkom utilizes deadly force with his handgun. Baldwin falls to the ground and drops the knife. Officers then render first aid until ECFD arrives.

GENERAL ORDERS

15 USE OF FORCE: States that control may be achieved through the use of verbal warnings or physical force. Officers Bonilla and Van Woerkom made several attempts to gain compliance from Baldwin through verbal commands. When those efforts failed, they utilized their department issued ECD to attempt to gain compliance from Baldwin. Baldwin demonstrated very little reaction to either of the ECD strikes and continued his stance with the knife. When Baldwin began using the knife on himself, Officer Van Woerkom discharged his department issued firearm. Baldwin was struck by all four rounds fired and dropped the knife.

15.1 FORCE OPTIONS: States an Officer shall choose the available force option, which is reasonable and necessary to effectively establish control of the situation. Clearly, good judgment and the specific circumstances of this situation dictate which options the officers chose.

Baldwin initiated contact with police by calling 911 seven times. He yelled at dispatchers and insisted compliance with his demand to bring his girlfriend and his dog to him. He also told dispatchers that he was going to "take himself out". Based on Detective Barber's review of all

RK

seven calls, dispatchers did not recognize or document this statement, nor did they notify the officers about the statements.

When Officer Bonilla and Van Woerkom found Baldwin standing in the middle of the roadway, Baldwin immediately demonstrated defiance by refusing to leave the roadway. Both officers prepared to use physical strength on Baldwin as demonstrated by their statements in their interviews with investigators and by the fact that they both put protective gloves on. As they moved toward Baldwin, they began verbal communication to attempt to establish a report with Baldwin. That failed as Baldwin produced a knife and refused every request to sit on the curb or to drop the knife.

Detectives interviewed both officers following the incident. Both officers acknowledged that they carry impact weapons and that they had the impact weapons with them. Both officers stated that they did not use them due to the fact that they would have been required to get too close to Baldwin and his knife. Officer Van Woerkom went into great detail in his interview with detectives about his edged weapon training scenarios in the academy and how a suspect can close a distance between the suspect and the officer very quickly, even after being shot.

15.8.1 USE OF ECD: States that the ECD may be deployed when:

- Attempts to subdue a subject by Department-approved arrest and control techniques and/or self-defense techniques have been, or would likely be, ineffective.
- The individual has conveyed to the officer(s) that he or she will actively resist the use of Department-approved defensive tactic techniques, which will likely result in injury to the officer(s) or individual. The ECD shall not be utilized for subjects that are passively resistant.
- To protect the officer or other persons from attack. at that time

Baldwin was refusing commands, holding a knife to himself and walking in the roadway. Officer Bonilla requested code 3 cover, and Sergeant Larson arrived on scene as a result of that request. Officer Bonilla was holding his ECD while Officer Van Woerkom had out his firearm. Baldwin turned away from officers and ran. After a very short distance, Baldwin stopped, turned toward officers and began advancing toward Officer Bonilla with the knife out to his side. In response to that threat, Officer Bonilla discharged his ECD.

After Officer Bonilla's ECD failed, his verbal communication intensified. He rapidly repeated and insisted that Officer Van Woerkom switch to his ECD by saying, "go taser, go taser, I don't have a taser, go taser, go taser." In watching Officer Van Woerkom's BWC, Officer Bonilla repeated the words "go taser" approximately 5 times before the sound of Officer Van Woerkom's gun being holstered can be heard. Officer Van Woerkom then draws his ECD and the red laser that assists with aiming of the device is visible on Baldwin. Based on the BWC video, Officer Bonilla could see the laser dot as well, because he repeats several times that he wants Officer Van Woerkom to aim lower. You can see the dot drop down to about Baldwin's waist before the distinctive sound of the ECD can be heard.

Officer Van Woerkom's ECD malfunctioned. The sound of the ECD sparking can be heard at 2:27:13 into the video, but the barbs do not immediately deploy. At 2:29:26 into the video (over



2.1 seconds later), a "pop" can be heard and the ECD wires become visible. During this time, Officer Van Woerkom announces to the other officers on scene that it was "ineffective". Upon careful review of this video, the laser aiming dot was in the area of Baldwin's torso when the barbs deployed. Even though Officer Van Woerkom announced that it was ineffective because of the malfunction, Baldwin reacted to the ECD by going down on his knees at 2:31:17. The supplemental report completed by Detective Barber shows that Officer Van Woerkom's ECD was activated for 5 seconds. Since the activation started 2 minutes: 27 seconds: 13 one hundredths into the video, the ECD stopped discharging at 2:32:13, which is less than one second after Baldwin went down to his knees. Based on the BWC video, this was not enough of an impact to overcome Baldwin's fortitude. The Taser ECD can be re-activated after the initial 5 seconds ends. Officer Van Woerkom can be observed on his BWC video beginning the transfer back to his firearm after he announces that his ECD was "ineffective".

15.4.1 USE OF LESS LETHAL "BEANBAG" ROUND

This section of the General Orders allows for the use of the less lethal "beanbag" round when all of the following conditions exist:

- Attempts to subdue the subject by Department-approved arrest and control techniques and/or self-defense techniques have been, or would likely be, ineffective.
- It is reasonable to expect it will be unsafe for officers to get within lunging distance of the subject.
- At least one back-up officer, with a conventional firearm, must be present and positioned to cover the officer using the beanbag gun in the event it does not resolve the situation.

When Sergeant Larson arrived on scene, he called for a "blue gun" and a K-9. Sergeant Sprecco heard the call for the equipment and when he arrived on scene, he loaded his blue gun and brought it to the scene. Sergeant Sprecco took up a position directly in front of Baldwin between Sergeant Larson and Officer Bonilla. Prior to Officer Van Woerkom using lethal force, Sergeant Sprecco can be seen in Officer Van Woerkom's BWC video with the less lethal shot gun pointed at Baldwin. He chose not to deploy it. Sergeant Sprecco's point of observation is not documented as Sergeant Sprecco did not activate his BWC until after the use of force concluded.

In his statements to Detectives, Sergeant Sprecco acknowledges that even in a kneeling position, Baldwin could have been a threat to officers based on how close the officers were. He explained that "based on your perception or reaction time, that distance is pretty close uh with someone with an edged weapon." Sergeant Sprecco did not deploy the less lethal "beanbag" round to stop Baldwin because he did not perceive a threat to himself or the other officers. Baldwin was only trying to cut his own neck. Sergeant Sprecco was prepared to render first aid after that took place, so he lowered the weapon.

I met with Sergeant Sprecco on Friday January 27, 2017 to ask him questions about his use of the less lethal blue gun. In an explanation of his decision to not use the blue gun, Sergeant Sprecco stated that Baldwin was on his knees and was threatening to cut his own throat and that he was suicidal. He did not feel the need to risk further harm to Baldwin. Also, because Baldwin was on his knees, it effectively reduced the less lethal targeting area. Sergeant Sprecco

believed he was close enough to accurately aim at an appropriate area, but Baldwin was moving. Sergeant Sprecco did not want to accidentally shoot Baldwin in the head or heart and cause his death when Baldwin was only trying to hurt himself and not others.

Sergeant Larson was the first supervisor on scene. He told Detectives that he did not have his firearm out because he was trying to watch what the officers were doing. Sergeant Larson called for a blue gun and a K-9 to be brought to the scene and remembers Sergeant Sprecco arriving with a blue gun a short time later. After the unsuccessful deployment of two ECD's, Sergeant Larson saw Baldwin on his knees but provided a statement to Detectives that Baldwin was still a threat to officers because of how quickly he could have gotten up and the fact that he was still armed with a knife. Sergeant Larson wanted Sergeant Sprecco to deploy the blue gun. When Sergeant Sprecco didn't deploy it, Sergeant Larson loudly said, "do it, do it." Officer Van Woerkom told Detectives that he heard the statement made by Sergeant Larson and that it did not affect his decision to use lethal force. He believed it was intended for Sergeant Sprecco to deploy the blue gun. Officer Van Woerkom's first shot was approximately 1.5 seconds after the first verbalization to "do it".

15.10.1 PROTECTION OF THE GENERAL PUBLIC

Officers must keep in mind that their basic responsibility in the use of firearms is to protect the public and themselves. Officers shall not fire under conditions that would subject bystanders or hostages to death or possible injury, except to preserve life or prevent serious bodily injury. Firing under such conditions is not justified unless the failure to do so at the time would create a substantial immediate threat of death or serious bodily injury.

15.11.1 POLICY

The policy for the use of deadly force is not intended to create doubt in the mind of a peace officer at a moment when action is critical and there is little time for mediation or reflection. It is meant to provide a reasonable and legal basis for the critical decision of using deadly force.

An officer is authorized the use of deadly force when it appears reasonably necessary:

- To protect himself/herself or others from an immediate threat of death or serious bodily injury;
- To prevent a crime in which human life is in serious jeopardy as a result of a suspect's actions;
- To apprehend a fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.
- Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

Officer Van Woerkom told Detectives that his decision to use lethal force was based on his concerns for the safety of the public as well as the safety of the officers on scene. He recalled academy training for edged weapons that stressed how quickly a suspect could close distance between himself and an officer. He articulated his discomfort with how close they were to Baldwin which was corroborated in Sergeant Larson's BWC video which shows Officer Van Woerkom stepping closer to Baldwin to fire his ECD, then quickly retreating. Officer Van Woerkom clearly articulates the series of events that led up to Officer Bonilla's ineffective ECD deployment and his



own partially effective ECD deployment. He also believed the blue gun failed after seeing Sergeant Sprecco on scene with the blue gun aimed at Baldwin but not seeing it go off. In slashing at his own neck, Baldwin's body position elevated off of his heels and thrust forward with the slashing motion. As he completed that action a second time, Officer Van Woerkom articulates his belief that all available force options have failed and that Baldwin is a threat to his fellow officers. He utilized lethal force until Baldwin dropped the knife.

Officer Van Woerkom's point of view in this use of force was approximately 90 degrees different than the other officers on scene. From his position, the movement of Baldwin's body in a forward direction was more visible. That being said, Baldwin was on his knees and slashing at his own throat when Officer Van Woerkom decided to use lethal force. There were two other officers on scene with weapons pointed at Baldwin. Sergeant Sprecco with the blue gun and Officer Bonilla with his firearm. Neither of them chose to use their weapons.

CONCLUSIONS:

Graham Vs Connor: The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

Based on the facts of this incident, all three of the benchmarks for General Order 15.8.1 were met before Officer Bonilla chose to deploy his ECD. This review of his use of the ECD shows it was both reasonable and necessary to attempt to gain control of Baldwin. In review of Officer Bonilla's training records, he was present for the ECD Update training that was presented at the June 2016 Department Training day.

Based on the facts of this incident, all three of benchmarks set forth in General Order 15.8.1 were met before Officer Van Woerkom chose to deploy his ECD. This review of his use of the ECD shows it was both reasonable and necessary to attempt to gain control of Baldwin. Officer Van Woerkom's training records indicate he was present for the ECD Update training that was presented at the June 2016 Department Training day.

Before Baldwin ran away from the officers on scene, the tone of the contact was calm and helpful. Officers were communicating calmly to Baldwin and each other. Baldwin's decision to run and then quickly turn and advanced at the officers, changed the tone of the contact significantly. Officer Bonilla's deployed ECD failed and Officer Van Woerkom's verbal commands became directive and rapid. Officer Bonilla was rapidly repeating his subsequent communication, directing Officer Van Woerkom, first on what weapon to use, and then where to aim it. Officer Van Woerkom's ECD deployment also failed to subdue Baldwin.

When Baldwin began slashing at his own throat, Sergeant Larson yelled, "do it, do it". Sgt. Larson clarified in his interview with Investigations that the intent of the statement was to encourage Sgt.



Sprecco to deploy the less lethal blue gun, but the directive also added to the overall urgency that Officer Van Woerkom perceived to resolve the situation. Officer Van Woerkom said he was focused on and effected by the danger of how close he and the other officers were to Baldwin and that he perceived a need to protect himself, the other officers and the general public from an immediate threat of death or serious bodily injury. Leading up to the use of lethal force, available and reasonable use of force options on scene had been exhausted or were impracticable. In his interview with Investigations, Officer Van Woerkom indicated that the two failed ECD deployments and the lack of a blue gun deployment led him to conclude that lethal force was his only remaining option. Based on these facts, without regard for their underlying intent or motivation, it is my opinion that the utilization of lethal force by Officer Van Woerkom at that specific time was objectively reasonable and necessary and was within the guidelines of the Departmental General Orders.

FOLLOW-UP:

Five of the phone calls made to 911 by Baldwin were handled by a newer employee. One was handled by a tenured employee and one was handled by a supervisor. In speaking to the Communications Manager, it is standard operating procedure to include critical officer safety information in the Call For Service (CFS). Detective Barber's transcriptions include clear suicidal statements that are not in the CFS. The CFS does include information that Baldwin was missing teeth and difficult to understand. Training has been completed with the new dispatcher and with the dispatch supervisor who did not recognize the statements, reviewing the information that was missed and the appropriate way it should have been handled.

When the Taser ECD was initially introduced, officers were given the option of having a battery installed that extended the pistol grip of the device with a backup cartridge. As the officers wore these in the field, it was discovered that the extended grip that held the second cartridge added stress to the ECD's frame causing it to break prematurely. The department no longer offers this option, limiting officers to a single cartridge. I spoke to a Taser International sales representative who stated that Taser has addressed this issue and it is no longer causing failures when the X26 Taser is paired with the extended battery. Taser also offers a battery that does not automatically shut off the ECD at 5 seconds.

Detective Barber was briefed on Officer Van Woerkom's ECD failure. He is a trained armorer for the Taser X26 ECD. After downloading the device's history, he learned that the device had been spark tested six days prior to this event, which is consistent with and well within the manufacturer's recommendations. Also documented in Detective Barber's supplemental is the fact that the cartridge on Officer Van Woerkom's ECD had expired 1/2016. Since the use of force occurred 1/2017, the cartridge had been expired for one year at the time of the activation. Detective Barber found a cartridge with the same expiration date as Officer Van Woerkom's and it functioned properly. He was not able to replicate the failure experience by Officer Van Woerkom at the scene.

Current members of the Inspections Training and Personnel Division were unaware that the cartridges had an expiration date. In learning this, all of the officers that have department issued

ECD's were asked to inspect their cartridges and were provided current cartridges for expired cartridges.

Training records dating back to 2005 indicate that ECPD has not done department training for the blue guns. General Orders 15.4.1 recommends the beanbag ammunition be used in situations where the point of impact can be controlled by the shooter. Fatal or serious injury can occur if fired at "point blank range" at the head, neck, or heart (thoracic area). Useful range is five yards to twenty yards. Intentionally shooting a subject in the head or neck (or heart, "if within five feet") should be avoided, nor should the beanbag be used when the suspect is in danger of a fall from an extreme height that could cause severe injury or death, except to defend a police officer or others from substantial risk of serious bodily injury or death. Sergeant Sprecco feared hitting Baldwin in the head or heart and causing more injury than Baldwin was intending to cause himself. Sergeant Sprecco believes he was about 7 yards from Baldwin and the useful range per policy is 5 to 20 yards.

Inspections Training and Personnel mandates monthly shift training topics that includes General Orders 15.4 "BEANBAG" ROUND. The requirement does not specify that training must be for the entire section, 15.4 through 15.4.3. Corrections will be made to the Shift Training outline to specify coverage of entire sections in the General Orders rather than simply listing the parent section number.

RECOMMENDATIONS:

Training is needed for less lethal blue guns and has been scheduled for the June 2017 department training day. Three hundred beanbag rounds have been purchased to replace existing rounds and the existing rounds will be used for training.

The bandoliers for the blue guns are tattered and stretched out making it difficult to retrieve the shells from them. New bandoliers have been ordered to replace all existing ones.

One hundred and fifty new ECD cartridges have been ordered from Taser for inventory. They have a five year shelf life. The expired cartridges were collected to be used for training.

Continued de-escalation training is critical to prepare officers for encounters with suicidal and criminal intentions. It is currently scheduled for both the June and December 2017 department training days.

PL

OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO

San Diego
330 West Broadway
San Diego, CA 92101
(619) 531-4040

BONNIE M. DUMANIS
DISTRICT ATTORNEY

<http://www.sandiegoda.com>

May 4, 2017

Chief Jeff Davis
100 Civic Center Way
El Cajon, CA 92020

Re: Non-fatal shooting of Danny Martin Baldwin on January 1, 2017 by El Cajon Police Officer A. Van Woerkom; El Cajon Police Department Case No. 17-000014; DA Special Operations Case No. 17-002PS; Deputy District Attorney Assigned: Paul Reizen

Dear Chief Davis:

We have reviewed the reports and other materials compiled by your agency's Homicide Unit concerning the circumstances leading to the non-fatal shooting of Mr. Danny M. Baldwin by El Cajon Police Officer A. Van Woerkom on January 1, 2017. A District Attorney Investigator responded to the scene and was briefed by your officers. This case was presented to the District Attorney's Office for review on March 9, 2017.

Persons Involved

Mr. Danny Baldwin is a 56-year old, homeless man with a previous address in El Cajon. El Cajon Police Officer A. Van Woerkom is assigned to the Patrol Division and had been employed by the El Cajon Police Department for three years at the time of the incident.

Summary

On January 1, 2017, Mr. Baldwin placed seven 9-1-1 calls from his cell phone in a 28-minute period. During the calls, Baldwin demanded the dispatcher have officers bring his girlfriend to the corner of 2nd Street and Oakdale Avenue. Baldwin claimed he was going to "take himself out" in front of her. Officer Van Woerkom and three other officers responded to the area. Officers found Baldwin in the center median of 2nd Street holding a knife. Officers gave Baldwin commands to drop the knife, but Baldwin refused. Baldwin walked backwards into the roadway and onto the center median. There were open businesses as well as vehicle and pedestrian traffic in the area. Baldwin rambled about his dog and trouble with his girlfriend. Baldwin told the officers, "I'm going to kill myself no matter what." At one point, Baldwin ran from officers, then abruptly turned around, and squared off with his knife displayed. Officer Van Woerkom and another officer both fired their Tasers at Baldwin, but neither was effective in incapacitating Baldwin. During the second Taser deployment, Baldwin went to his knees in the street. He placed the knife to his neck and made two slashing motions along his neck and throat area. Fearing for the safety of the motorists, pedestrians, his fellow officers and himself, Van Woerkom fired four rounds at Baldwin striking him in both arms and the buttocks. Baldwin survived his injuries and later made a statement he wanted the police to kill him.

Statement of Mr. Danny Martin Baldwin

Investigators interviewed Mr. Baldwin while he was recovering in the hospital. Baldwin stated he had been depressed and called 9-1-1 on the evening of the shooting because he hoped to commit, “suicide by cop.” Baldwin did not remember the events prior to being shot, but he recalled officers telling him to “stop”, to “put the knife down,” and being hit by a Taser.

Mr. Baldwin said he wanted the officers to shoot him. He was trying to get them to shoot him and wished they had killed him. Baldwin did not tell the officers he wanted to commit “suicide by cop” and said he had a knife “to keep them [the officers] at bay.” However, Mr. Baldwin also stated the officers should not have kept approaching him and “pushing” him, and he claimed he planned to cut his throat if the officers had come closer. Baldwin added he would not have used the knife against the officers. Baldwin remembers writing a note found in his pocket. He said the note was written to his girlfriend and he remembers writing the words, “It had to come down to death by police.”

During the interview, Baldwin began to cry and told investigators he re-stated he wished the officers had killed him and said he would kill himself if there were no one in the hospital room with him. He apologized again and said he was sorry for “the inconvenience” and for causing the shooting officer trouble. “I’m just sorry for all the trouble I put everybody through.”

Approximately one week after the shooting Baldwin went to the El Cajon Police Department and asked to speak with the investigators. Baldwin told the detectives, “I do apologize for everything that happened...I got my head together now...my condolences to the police officer.”

Law Enforcement Witnesses

In addition to Officer Van Woerkom, there were four patrol officers hereafter identified as Law Enforcement Witnesses One, Two, Three and Four (LE1, LE2, LE3, and LE4) also on the scene at the time of the shooting. LE1 and LE4 each had been employed by the El Cajon Police Department for six years. LE2 and LE3 were both sergeants and each had been employed by the El Cajon Police Department for 15 years.

Statement of Officer Van Woerkom

Officer Van Woerkom was assigned to uniformed patrol duties and responded to the radio call to check on Mr. Baldwin’s welfare. Van Woerkom arrived and saw Baldwin in the median. Van Woerkom told Baldwin to get out of the roadway, but Baldwin did not comply.

LE1 arrived as Officer Van Woerkom was ordering Mr. Baldwin out of the roadway. Van Woerkom noticed Baldwin was armed with a knife. Van Woerkom said he knew from his police training that people with knives can cover short distances even after being shot. Mindful of the danger Baldwin posed with the knife, Van Woerkom purposefully tried to keep some distance between himself and Baldwin. Van Woerkom pulled his handgun and held it by his side while ordering Baldwin to put the knife down and sit on the curb so he could help him. Van Woerkom became concerned when Baldwin refused to put the knife down or sit on the curb. Van Woerkom believed Baldwin’s lack of compliance was escalating the situation. LE1 attempted to use his Taser on Baldwin, however, the Taser was ineffective and Baldwin began to run. Van Woerkom and LE1 ran after Baldwin, but also kept their distance because Baldwin was still armed with the knife. Van Woerkom worried Baldwin might attack random people nearby and hurt them.

Mr. Baldwin stopped running, turned and faced Officer Van Woerkom, and took an aggressive stance with his knife up. Van Woerkom worried about his safety and the safety of others. Van Woerkom holstered his handgun and drew his Taser. He shouted at Baldwin to drop the knife, but Baldwin continued to ignore the commands. Van Woerkom deployed his Taser and realized it was ineffective. Baldwin did drop to his knees but swiped at the Taser wires disconnecting them. Van Woerkom discarded his expended Taser and re-drew his handgun.

Officer Van Woerkom saw LE3 arrive with the “blue gun,” or less-lethal bean-bag shotgun, and thought, “Yes, great...perfect.” He described Mr. Baldwin as being on his knees and said, “I see [LE3]’s got the blue gun and I’m thinking okay that’s our next option, let’s do it, let’s go...come on do it, go, go, go.”

Officer Van Woerkom observed Mr. Baldwin starting to make slashing motions at his own throat and could see right away there was no injury. Van Woerkom told investigators, “[Baldwin’s] hand comes up again and the motions kinda ever so forward slightly and I know even in that space and distance I think everybody, even the three officers on the north and then me on the east, we’re all within such a close distance that I know I see that tiny, even ever so slight, movement forward. He could spring up really quick and the knife is up...then in my head, that’s when I decide he’s super close, he’s gonna hurt us or he’s gonna hurt somebody else. Um I have to act now to end the threat because everything else has failed—two Taser deployments, I saw the blue gun at some point but it wasn’t being fired. So I decided right then I needed to take, I needed to take action, so I fired until I saw the knife was on the ground.”

Officer Van Woerkom recalled hearing someone yell something to the effect of, “Do it now.” Van Woerkom took that to mean something had to be done now. Van Woerkom also thought something had to be done now and saw Baldwin as an immediate danger.

Law Enforcement Witness One (LE1)

LE1 responded to a radio call of a disturbance in the area of 2nd Street and Oakdale. Officer Van Woerkom was already there and was attempting to speak with Mr. Baldwin who was standing in the center median. LE1 also tried to speak with Baldwin. LE1 saw a knife in Baldwin’s hand and broadcast over the radio he needed additional officers to assist.

Mr. Baldwin began walking backwards. LE1 and Officer Van Woerkom followed and tried to communicate with Baldwin. Baldwin started running from LE1 and Van Woerkom, then stopped, turned, and faced LE1 with his knife raised up to his chest. LE1, Van Woerkom, and LE 3 all gave Baldwin orders to drop the knife. LE1 was concerned about Baldwin carjacking a motorist, and the safety of bystanders in the immediate area. LE1 deployed his Taser because Baldwin had just displayed his knife in a threatening manner and did not know what Baldwin’s next move would be. LE1’s Taser was ineffective at stopping Baldwin. LE1 yelled at Van Woerkom to switch to his Taser and aim low because of Baldwin’s bulky jacket. LE1 said Van Woerkom’s Taser was also ineffective. Baldwin dropped to his knees and began making a cutting motion to his throat. LE1 then heard someone, possibly LE2, say, “go ahead, go ahead, go ahead.” Moments later, LE1 heard gunshots.

LE1 did not know if any officers at the scene had a “blue gun.” LE1 never saw a blue gun, but believed LE2 was telling someone with a less-lethal-force weapon to, “go ahead, go ahead, go ahead.” LE1 told investigators Mr. Baldwin was, “definitely a threat” and believed Baldwin was projecting the message, “don’t get close to me or I’ll use the knife.” He estimated he was about ten feet away from Baldwin when the shots were fired.

Law Enforcement Witness Two (LE2)

LE2 was working as a patrol sergeant and heard LE1 call for additional units to assist with a man armed with a knife. When LE2 arrived on scene, he saw Officer Van Woerkom and LE1 trying to persuade Mr. Baldwin to put the knife down. Baldwin was walking away from the officers. Within seconds of arriving on scene, LE2 saw Baldwin with the knife to his chest, “like he was going to plunge it into his chest.” Baldwin turned away from the officers and ran. He ran for about 15 or 20 yards, stopped, turned towards the officers, and took an aggressive stance with the knife in his right hand. Baldwin went back and forth between holding the knife at his side and holding it up.

LE2 called for a “blue gun,” or less lethal (bean bag) shotgun, and a K9 Unit. LE1 deployed his Taser and it was ineffective. Later, Officer Van Woerkom also deployed his Taser but it failed to incapacitate Mr. Baldwin. LE3 arrived on scene with a less-lethal shotgun “within seconds” of LE2’s request. LE3 pointed the shotgun at Baldwin. LE2 initially thought Baldwin was going to give up at the sight of the shotgun because Baldwin put his arms out while he was on his knees and shouted at LE3, “Go ahead and do it. Just do it. Shoot me.”

LE3 did not fire and Mr. Baldwin began to slash at his own throat. LE2 told LE3, “Hey do it, do it.” LE2 was trying to let LE3 know the blue gun should be deployed. LE2 watched as Baldwin took another swipe at his throat. Baldwin “kind of fell or lunged forward slightly when he took the second swipe.” At this point, Officer Van Woerkom fired four rounds at Baldwin. LE2 thought, “He could have easily got up, run towards us, lunged towards us, and we would have had to react—so it’s a delayed response in just that reaction time.”

When asked to describe Mr. Baldwin’s movements prior to being shot, LE2 said, “It appeared that he was kind of hunkered down trying to get the nerve or the willpower you know, just enough inner strength...to basically use that knife and cut his neck...I don’t think he was lunging towards me, but he definitely was appearing to move forward.”

Statement of Law Enforcement Witness Three (LE3)

LE3, another sergeant, responded to LE1’s request for assistance for a person armed with a knife on 2nd Street. When LE3 arrived, he heard one of the officers requesting a “blue gun.” He described a blue gun as a Remington 870 shotgun designed to fire bean-bag rounds that were considered a less-lethal option for officers.

LE3 grabbed his blue gun and met up with the other officers on scene who were all walking with Mr. Baldwin. LE3 never told the other officers he was there with the blue gun, but believed they were aware of his presence. LE3 heard the Taser go off and saw Baldwin swipe the Taser wires away from his jacket. Baldwin went down to his knees. LE3 was unsure if Baldwin went to his knees as a result of being tased or if he was following directions being given by officers. He

watched as Baldwin put the knife to his neck and described Baldwin as, “Trying to get the courage up to inflict whatever injury he wanted.” LE3 believed Baldwin was trying to commit suicide or wanted to commit suicide. Baldwin slashed at his own throat in a downward motion. LE3 then heard three to four gunshots coming from Officer Van Woerkom. LE3 estimated he was seven-to-ten yards away from Baldwin when Van Woerkom fired. He added, “I didn’t feel that it was appropriate for me to be closer in a situation like that with less lethal...based on perception or reaction time that distance is pretty close with someone with an edged weapon.”

LE3 explained he heard LE2 say, “Do it,” or something similar prior to the shooting. LE3 believed LE2 was speaking to him and interpreted “do it” to mean LE2 wanted LE3 to deploy the blue gun. LE3 did not fire because Mr. Baldwin was in a kneeling position and LE3 did not personally feel threatened by Baldwin or perceive him to be an immediate threat.

Statement of Law Enforcement Witness Four (LE4)

LE 4 responded to the radio call. When LE4 arrived, he saw Mr. Baldwin walking backwards with other officers approaching him. LE2 was asking for a blue gun, so LE4 retrieved his blue gun and was walking toward the scene when the shooting occurred. LE4 could see what looked like a knife in Baldwin’s hand. He heard officers order Baldwin to get on the ground multiple times and he heard someone say, “Do it, do it, do it,” just before shots were fired.

Statement of Civilian Witnesses

Investigators located and interviewed twenty witnesses who either saw portions of the incident or heard the gunshots. Three witnesses used their cell phones to videotape portions of the incident. Two videos were recorded after the shooting; another was taken from inside a vehicle with the windows rolled up and is of poor quality. One witness took photographs after the incident. All of the videos and photographs were voluntarily given to investigators and were viewed as part of this review.

Witnesses used terms like, “noncompliant, upset, crazy, scared, and irrational” when describing Mr. Baldwin’s behavior. One witness described Baldwin as “acting in a threatening manner.” One witness described the officers as “addressing (Baldwin) correctly.” Four witnesses described Baldwin as being on his knees at the time of the shooting and one witness said Baldwin was lying on his back when he was shot.

Investigation

Body-worn-camera recordings, scene photographs, evidence reports, crime lab reports, audio-recorded witness interviews, 911 recordings, radio transmissions and hospital reports were reviewed from this investigation. Cell phone videos captured by witnesses and video surveillance recording by surrounding businesses were also reviewed.

Body worn camera footage from Officer Van Woerkom and LE2 was reviewed. LE1 and LE3 did not activate their cameras.

Body-worn-camera footage from Officer Van Woerkom begins with Van Woerkom and LE1 approaching Mr. Baldwin who is in the center median of 2nd Street. It is nighttime, however there is illumination from officer flashlights, multiple commercial establishments, street lights and

oncoming traffic. Traffic is moderate, multiple food establishments appear to be open, and bystanders can be seen walking in the area. Baldwin is holding something in his right hand and walking backwards into the lane closest to the median as the officers follow him. Van Woerkom attempts a dialogue with Baldwin. He requests Baldwin's name and tells Baldwin his first name. Van Woerkom asks Baldwin what is going on and Baldwin responds, "My old lady won't give me my fucking dog." Van Woerkom tells Baldwin he can help him with his problem, but that Baldwin has to put down his knife. Baldwin refuses. Van Woerkom again asks, "How can we help you?" Baldwin replies, "I'm going to kill myself no matter what." Van Woerkom continues to tell Baldwin the officers just want to help Baldwin out. Baldwin replies, "Bullshit," and begins running down 2nd Street. Van Woerkom and LE1 chase after Baldwin, who abruptly stops, turns around, and squares off on the officers with the knife in his right hand. Van Woerkom yells, "Hey, hey, hey, put the knife down. Put the knife down." LE1 deploys his Taser, but the Taser is ineffective and Baldwin uses his knife to cut the barb-attached wires from his jacket. Baldwin continues to ignore commands to put his knife down. Van Woerkom fires his Taser, which strikes Baldwin in the leg. Two minutes and thirty-two seconds into the video, Baldwin drops to his knees and begins making long, forceful slashing motions with the knife in his right hand in what appears to be an attempt to cut off the newly attached Taser wires. At this point, three officers can be seen standing to the right of Van Woerkom and directly in front of Baldwin. All officers appear to be within a close distance of Baldwin. Three of the officers, including Van Woerkom, have their guns drawn and pointed at Baldwin. The officers yell at Baldwin to get on the ground. Baldwin then makes forceful slashing motions from his neck forward with his right hand. Someone yells, "Do it. Do it." Almost simultaneously as Baldwin makes the third slashing motion forward, Van Woerkom fires four rounds from his pistol. The shooting occurs nine seconds after Baldwin went to his knees.

Body-worn-camera footage from LE2 begins shortly before Mr. Baldwin turns and starts running south on 2nd Street. The view is from LE2 standing in the middle of the southbound lanes of 2nd Street with Baldwin slightly to LE2's left and Officer Van Woerkom to the far left-hand side of 2nd Street near the median. LE2's camera captures essentially the same content as Van Woerkom's body-worn camera footage, but depicts the incident from a different vantage point.

The scene was secured, photographed, and investigated by El Cajon Police Department Homicide detectives. Four bullet cartridge cases were recovered and analyzed by the crime lab. Using an optical-surveying device, it was concluded all four rounds were fired from Officer Van Woerkom at a distance of approximately 20 feet. Optical surveying also determined LE1, LE2, and LE3 were approximately 11, 14, and 16 feet respectively from Mr. Baldwin at the time of the shooting.

Post incident examination revealed Mr. Baldwin was armed with a Model 110L, wooden handle, folding Buck knife with a 3 ½ inch blade.

A Taser X26 electronic control device, Taser probes, cartridges and blast doors were also located at the scene in locations consistent with the officers' statements and recordings from the body-worn-camera recordings.

A 5-page handwritten letter was recovered from Baldwin's jacket pocket. In his statement to investigators, Baldwin confirmed he wrote the letter to his ex-girlfriend. Portions of the letter are written as a will, while other sections appeared to be a suicide note and included the statement, "so it came down to this, death by police and you watching them do me in."

Injuries

Mr. Baldwin sustained two through-and-through gunshot wounds to his upper right arm and a through-and-through gunshot wound to his upper left arm. One of the rounds to Baldwin's right arm continued through his arm and into his chest. He sustained an additional gunshot wound to his upper right buttock. Baldwin is expected to make a full recovery.

Toxicology

A hospital toxicology report revealed Mr. Baldwin tested positive for amphetamine. Baldwin admitted to hospital staff he uses methamphetamine and has been admitted to a hospital previously for a psychiatric condition.

Legal Analysis

Under California law, peace officers may use deadly force to protect themselves from the threat of death or great bodily harm and to use reasonable force in making an arrest. California Penal Code section 835a allows an officer to use reasonable force to make an arrest and to overcome resistance by a person for whom he has reasonable cause to believe has committed a public offense. That section states the officer need not retreat or end his effort to make an arrest because of that person's resistance. In accordance with Penal Code section 196, peace officers may use deadly force in the course of their duties under circumstances not available to members of the general public. We are mindful, however, that certain limits on the use of deadly force apply to peace officers.

Irrespective of any laws applicable to situations where peace officers use deadly force in accomplishing their duties, the law of self-defense is available to any person. A person acts in lawful self-defense or defense of another if he reasonably believed that he or someone else was in imminent danger of suffering bodily injury, believed that the immediate use of force was necessary to defend against that danger, and used no more force than was necessary to defend against that danger. In determining whether a person's beliefs were reasonable, it is necessary to look at all the circumstances as perceived by the person using self-defense and to consider what a reasonable person in a similar situation with similar knowledge would have believed.

In *Graham v. Conner* (1989) 490 U.S. 386, the Supreme Court explained that an officer's right to use deadly force is to be analyzed under the Fourth Amendment's "objective reasonableness" standard. The test of reasonableness in this context is an objective one, viewed from the vantage of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. (*Graham, supra*, 490 U.S. at 396) It is also highly deferential to the police officer's need to protect himself and others. The calculus of reasonableness must embody allowance for the fact that "police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain and rapidly evolving—about the amount of force that is necessary in a particular situation." (*Id.*)

Chief Jeff Davis
May 4, 2017
Page 8 of 8

As one court noted, “[U]nder Graham we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes “reasonable” action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure.” (*Smith v. Freland* (6th Cir. 1992) 954 F. 2d 343, 347.)

Conclusion

Our review of this incident shows that after verbal engagement was ineffective, officers took appropriate steps to avoid the use of deadly force. Two separate Taser deployments did not incapacitate Mr. Baldwin. At the moment shots were fired, all four peace officers were within a short distance of Mr. Baldwin and his knife. There was vehicle and pedestrian traffic in close proximity, as well as open businesses on the same side of the street as Mr. Baldwin.

As required by law, our review must consider the totality of the circumstances, including the officers’ perception of the rapidly unfolding events. Based on the potential danger to the officers and bystanders by Mr. Baldwin’s erratic behavior while armed with a knife and his refusal to surrender, the officer’s actions were reasonable under the circumstances and no further action will be taken by the District Attorney’s Office.

A copy of this letter, along with the materials submitted for review, will be retained in our files.

Sincerely,

BONNIE M. DUMANIS
District Attorney

By: Fiona Dunleavy
FIONA DUNLEAVY
Deputy District Attorney
Assistant Chief, Special Operations Division

BMD:FD:eg